Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

ABDUL AZIZ

Petitioner,

v.

TRI-STATE UNIVERSITY

Respondant.

On the petition for a writ of certiorari
to the United States Court of Appeals
for the Seventh Circuit, Chicago

PETITION FOR A WRIT OF CERTIORARI

ABDUL AZIZ, Ph. D.
Petitioner pro se
19924 Lake Park Drive
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27pp

QUESTIONS PRESENTED

1. Whether an employer may hire an individual who (i) did not apply, (ii) was not in the applicants' pool, (iii) was a current employee of the employer, (iv) was not qualified and (v) does not belong to the protected group by virtue of his/her race and national origin, while refusing to hire an individual who (i) applied, (ii) was in the applicants' pool, (iii) was not a current employee of the employer (iv) was qualified and (v) belongs to the protected group by virtue of his/her race and national origin.

2. Whether "qualifications" as used in the Title VII of Civil Rights Act of 1964 and ADEA of 1967, as amended, are a genuine issue, as shown below:

It shall be unlawful for an employer to refuse or fail to hire an individual, despite his/her "**qualifications**", or otherwise to discriminate an individual because the individual belongs to the protected group by virtue of his/her age race, national origin, color and religion.

3. Whether the district court and the appellate court have violated Title VII of Civil Rights Act of 1964 and ADEA of 1967, as amended,

4. Whether, for hiring discriminations, a further amendment will strengthen Title VII of Civil Rights Act of 1964 and ADEA of 1967, as amended. The further amendment should read as follows:

"Qualifications in hiring discrimination is a genuine issue and as such hiring discrimination complaints shall not be dismissed by summary judgments."

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

Coordinates of authorities are given below in parenthesis. First digits are page numbers, second digits are line numbers. Headlines and sub headlines are all counted as lines. (3 14) is page 3, line 14.

Authorities are cited in bold faces:

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1. Title VII of Civil Right Act of 1964, as amended

(i 2), (1 24), (3, 13), (4 18), (5 15&16), (6 12), (11 20), (12 26), (13 17), (14 24), (15 16), (21 7).

2. Rule 56(c): (3 26), (4 6), (10 10), (12 7 & 8), (12 14), (13 19), (19 5,14 & 27).

5. Supreme Court Opinion on St. Mary's Hon. Ctr. v. Hicks 509 US 502, 506-512, 113 S. Ct. 2742 (1973):

(ii 2), (6 10).

In The
SUPREME COURT OF THE UNITED STATES

Abdul Aziz, *Petitioner,*

v.

Tri-State University,

Respondent.

I. PETITION FOR WRIT OF CERTIORARI

Petitioner, Abdul Aziz, petitions this court to grant a writ of certiorari to review the judgment of the United States Court of Appeals Seventh Circuit.

II. OPINIONS BELOW:

None published. Appeals Court decision affirming district court order is in exh._1_, page 1a. The district court order is in exh. _2_, page 2a

III. JURISDICTION:

1. The final judgment to be reviewed was entered on February 2, 2000..

2. Jurisdiction is conferred upon the Supreme Court by Rule 10(c), which says "a United States Court of Appeals has decided an important question of federal law that has not been, but should be settled by this court," and "has decided an important federal question in a way that conflicts with relevant decision of this court."

3. And jurisdiction is conferred upon the Supreme Court by federal law, Title VII of Civil Right Act of 1964 and the

ADEA of 1967, as amended, that has not been decided, but should be settled by this court. Title VII of Civil Rights Act of 1964 and ADEA of 1967, as amended, says in essence:

> It shall be unlawful for an employer to refuse or fail to hire an individual, despite his/her **qualifications**, or otherwise to discriminate an individual because the individual belongs to the protected group by virtue of his/her age, race, national origin, and religion.

IV. STATEMENT OF THE CASE

In response to an advertisement for a faculty position by the respondent, the petitioner applied. He was better qualified than selectee, and he belongs to the protected group by virtue of his age (63), race (Indian) and national origin (Bangladeshi). But he was not hired. He filed a discrimination complaint. His complaint was dismissed by summary judgment. He then filed a motion for relief of judgment pursuant to Rule 60(b)(6) The district court denied the motion, exh._2_. and the appellate Court affirmed the district court decision, exh._1_.

V. STATEMENT OF THE ISSUES

The district court could not have dismissed my complaint if the employer had not committed the following unlawful actions:

1. The employer hired a person who did not apply for the position and who was not in the applicants' pool, whereas I applied for the position and I was in the applicants' pool.

2. In addition the employer committed perjuries.

VI. PROOF OF THE ISSUES

1. Exh._3_ is my application. There is no such application from the selectee on the record. No such application was produced from the selectee during discovery.

3. Employer said that the position was not filled, exh._4_. This is a perjury. Exh._5_ shows selectee's appointment letter signed by the president. Exh._6_ shows the name of Roger Hawks as the incumbent of the position advertised, exh._7_.

4. Exh._8_ is another document where the employer perjured by the statement, "we will not be filling the 1995-96 academic year's position of chairman." The same exhibit says,"However, the institution has some severe financial constraints which require it to be aggressively pursuing a campus building and maintenance programs as well as endowment activities which have precluded us filling this position at this time."

5. Exh._9_[1] shows that on March 12, 1998, I talked to Prof. Hawks at 3:19 p. m.[2] After introducing myself, the first question I asked was, "Am I speaking to the Chair, ME/AE Department, Dr. Roger Hawks? He replied, Yes."

6. The exhs._4, 8 & 9 are evidence of conspiracy and concealment of truth.

VII. ARGUMENTS IN FAVOR OF THE QUESTIONS PRESENTED

For question No.1, I have no arguments.

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[1] This is an AT&T telephone bill.

[2] The appointment was made on the same day at 10:43 am.

2. Whether "qualification" as used in Title VII of Civil Right Acts of 1964 and ADEA of 1967, as amended, is a genuine issue.

Title VII of Civil Right Acts of 1964 and ADEA of 1967, as amended, says:

It shall be unlawful for an employer to refuse or fail to hire an individual, despite his/her **qualifications**, or otherwise to discriminate an individual because the individual belongs to the protected group by virtue of his/her race, national origin, and religion.

In the above law "**qualification**" is an issue. Since" qualification" is an issue by **law**, it is a **genuine issue.** Also this issue, as a genuine issue, is in conformity with the genuine issues referred to in Rule 56(c) and in Supreme Court's opinion **on** Rule 56(c).

Rule 56(c) says:

The judgment shall be rendered forthwith, if the pleadings, depositions, and answers to interrogatories, and the admissions on files, together with affidavits, if any, show that there is no **genuine issue** as to any material fact as a matter of law, and that the party is entitled to a judgment as a matter of law.

And the Supreme Court Opinion on Rule 56(c) says:

The plain language of Rule 56(c) mandates the entry of summary judgement, after adequate time for discovery and upon motion, against a party who ails to make sufficient showing to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. In such a situation, there can be '**no genuine issue** as to any material fact'.

According to Rule 56(c) substantiated by the Supreme Court Opinion, a defendant shall be awarded a summary judgment in its favor if there is no **genuine issue.** Since **qualification is a genuine issue** the defendant should not be awarded the summary judgment as a matter of law. But it was. Therefore, both courts have violated **Title VII of Civil Rights Act of 1964, as amended. So, they have erred.**

Qualification is a genuine issue not only in this case but also in all the cases filed since the enactment of the law.

This is a question of national importance for the Supreme Court to decide. The Supreme Court decision will not only be important to me but also to all others similarly situated. But in this case, **it is a national importance for the Supreme court to decide if qualification is a genuine issue,** because (i) in every complaint qualification is a issue. and (ii) it involves millions of minorities of the United States

3. Whether the court of appeals has violated Title VII of Civil Rights Act of 1964 and ADEA of 1967, as amended.

Title VII of Civil Rights Act of 1964 and ADEA of 1967, as amended, say:

It shall be unlawful for an employer to refuse or fail to hire an individual, despite his/her **qualifications,** otherwise to discriminate an individual because the individual belongs to a protected group.

As stated earlier, the selectee did not apply for the position and his name was not in the applicants' pool. By hiring him and bypassing me is the act of utmost discrimination

4. Whether, for hiring discriminations, a further amend-

ment[3] will strengthen the above Supreme Court Opinion. The amendment should read as follows:

"Qualification in hiring discrimination is a genuine issue and as such no hiring discrimination complaints must be dismissed by summary judgment."

At present no defense counsels are using the above Supreme Court Opinion. If this amendment is adopted, no defense counsel will be given a chance to bypass this amendment.[4] As a result more and more plaintiff's will win their cases. Therefore, this amendment is a question of national importance to the Supreme Court to decide if, indeed "Qualification in hiring discrimination is a genuine issue." If Supreme Court finds so, then we shall all know why employment hiring discrimination complaints are all summarily dismissed.

5. Whether, for hiring discriminations, another further amendment is feasible or needed to the existing 1993 Supreme Court Opinion shown below:

> There are two **methods** by which a plaintiff can attempt to prove potential discrimination. First, plaintiff may present **direct evidence** of employment discrimination. Second, the plaintiff can rely on the three stage order of proof and presumptions and satisfy his burden of proof using circumstantial evidence. *St. Mary's Honor Ctr. v. Hicks* 509 US 502, 506-12, 113 S. Ct. 2742 (1973).

The needed amendment should read as follows:

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[3] A further amendment to the amendment of the ADEA of 1967.

[4] because it will be a very strong amendment.

"For discrimination in hiring, the direct method will be the direct application of Title VII of Civil Rights, as amended. In such an amendment, no circumstantial evidence will be needed."[5] The direct method consists of the determination of two issues.

(1) Whether plaintiff was better qualified. (2) Whether plaintiff belongs to the protected group by virtue of his.

(2) Whether plaintiff belongs to the protected group by virtue of his.

The above amendment is actually a clarification of the terms, "methods" and "direct evidence". This clarification will eliminate the many different interpretations they may have. If the Hon. Supreme Court deliver such an opinion, the adjudication of complaints "for discrimination in hiring" will be much shorter and quicker resulting in judicial economy.

THE SUMMARY JUDGMENT WAS NOT APPROPRIATE

VIII. QUESTIONS OF NATIONAL IMPORTANCE

1. That "qualification" is a genuine issue is not known to the courts. For this reason the courts are dismissing all the hiring discrimination complaints. This is a question of most national importance. The Supreme Court must decide if "qualification" as used in the Title VII of Civil Rights of 1964 and ADEA of 1967, as amended, is a genuine issue. The decision will be a very difficult one, because the solution of discrimination

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[5] And there is no circumstantial evidence when the two allegations: (i) A less qualified person was hired and (ii) I was unlawfully discriminated because I belong to the protected group by virtue of my age. These two allegations are established from documentary evidence.

another question of national importance, for the Supreme Court to decide, if "qualification" is a genuine issue and must be precluded in the adjudication of employment hiring discrimination complaints.

3. During 1994-1996, I filed thirteen hiring discrimination complaints. All of them have been dismissed by summary judgments. In all of them I was indisputably better qualified than the selectee.[6] Yet, I was not hired.

THE SUMMARY JUDGMENT WAS NOT APPROPRIATE.

IX. ANSWER TO THE DISTRICT COURT

In its order dismising the complaint, the court refers to the so called McDonnell Douglas v. Green three-step procedure by stating, "The claims still fail because Tri-State had legitimate non-discriminatory reasons for not hiring Aziz." (Citation ommitted). This so called McDonnell Douglas v. Green three-step proceedure is no longer applicable. It has been **superseded by the 1993 Supreme Court Opinion which says:**

> There are two methods by which a plaintiff can attempt to prove potential discrimination. First, plaintiff may present direct evidence of employment discrimination. Second, the plaintiff can rely on the three stage order of proof and presumptions and satisfy his burden of proof using circumstantial evidence. *St. Mary's Honor Ctr. v. Hicks* 509 U.S. 502, 506-12, 113 S. Ct. 2742 (1973).

I have presented direct evidence of employment discrimination. So, the court's judgment is null and void.

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[6] Of course, I belong to the protected group by virtue of my age, race and national origin.

The court further says,

Thus, the burden shifts to Aziz to offer evidence that these reasons were pretexual. Id. at 1119. Since I have opted to the first method enanciaed by the Supreme Court, I do no longer have to use the so called McDonnell Douglas Frame.

The rest of the opinion of the district court is irrelevant.

X. ANSWER TO THE APPELLATE COURT

In its decision, the appellate court says:

"it [Aziz] failed to state a claim upon which relief ould be granted and was barred by both res judicata and the statute of limitation."

The district court has not referred to the above three issues, the defendant has not referred to the above three issues and I, too, did not refer to the above three issues. Therefore, the appellate court's remarks are out of context.

X. CONCLUSION

By not paying attention to issues that (i) the selectee did not apply for the position, (ii) he was not in the applicants' pool and (iii) he was a current employee for the employer, **both the courts made a manifest error.**

X. PRAYERS

WHEREFORE, for all the foregoing reasons this

humble petitioner prays that this Honorable Supreme Court of the United States of America grant petitioner's writ of certiorari adopting the proposed amendments.

Respectfully submitted,

3-20-00 301-528-0241

Abdul Aziz, Ph.D., Petitioner Pro se, 19924 Lake Park Drive, Gemantown, MD 20874-101

APPENDIX OF EXHIBITS

Exhibits	Titles	Pages
1.	Appellate Court Decision	1a
2.	District Court Order	2a
3.	My application dated 11-8-94	5a
4.	A letter from Vice-President	6a
5.	Appointment letter of selectee	7a
6.	A page from the University catalogue showing Hawks as the Chairman	8a
7.	Advertisement of the position	9a
8.	Another document of perjury dated 3-8-95	10a
9	Record of conversation with Prof. Hawks.	12a

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

UNITED STATES COURT OF APPEALS
For the seventh Circuit
Chicago, Illinois 60604

Submitted December 13, 1999
Decided February 2, 2000

Before

Hon WILLIAM J. BAUER, Circuit Judge

Hon John L. COFFEY, Circuit Judge

Hon DANIEL A. MANION, Circuit Judge

No 99-286

ABDUL AZIZ,
Plaintiff-Apelant,

Appeal from the nited States District Court for tr Northern District of Indiana, Forth Wayne Division

No. 99 C 268

TRI-STATE UNIVERSITY,
Defendant-Appellee.

William C. Lee, Chief Judge

ORDER

Abdul Aziz appeals the dismissal of the case against Tri-State University under Rule 12(b)(6). Aziz's

complaint referenced a prior discrimination case Aziz brought against Tri-State and alleged that Aziz "lost" that case Tri-State engaged in what Aziz cals "bias" and "false statement" The district court dismissed Aziz's complaint sua sponte, noting it failed to state a claim upon which relief could be granted and was barred by both res judicata an statute of limitations.

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

CIVIL No. 1:96 CV 286

ABDUL AZIZ,
Plaintiff,

v.

TRI-STATE UNIVERSITY,
Defendant.

ORDER

This matter is before the court on motion for summary judgment filed by the defendant on March 14, 1997. The parties completed briefing the motion on April 18, 1997. For the follwing reasons, the motion for summary judgmen will be granted.

Summary Judgment Standard

Summary judgment is proper "if the pleadings, depositions, answers to the interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). However, Rule 56c) is not a requirement that the moving party negate his opponent's claim. Fitzpatric v. Catholic Bishop of Chicago, 916 F.2d 1254, 1256 (7th Cir. 1990). Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery, against a party "who fails to make a showing sufficient to establish the existence of an element essential to that arty's case, in which that party will bear the burden of prof at trial." Cellotex Corp. v.Catrett, 477 U.S. 317, 322 (1986). The claim still fails because Tri-State had legitiae non-discriminatory for not hiring Aziz. See Rush, 996 F.2d at 1118. Specificaly Tri-State claims that after it placed its second advertisement for the position, it faced several financial constraints, including required campus building renovatons, a maintenance program, and endowment activities.

This court has agreed that Tri-State has offered legitimate non-discriminatory reasons for its decision to not hire Aziz (or any other reasons). Thus, the burden shifts to Aziz to offer evidence that these reasons were pretexual. Id. at 1119. Aziz has completely failed to meet this burden, as he simply rests upon his assertion that he was not hired. As Tri-State points out, such an assertion is not evidence of discriminatory motive. Tri-State argues that if it had wanted to discriminate Aziz, it could hire one of the non-minority aplicants who responded to either its first or second advertisement. Approximately 47 people responded to Tri-State's first advertisement on April 24, 1994, and approximately 54

people responded to its October 25, 1994 advertisement (including Aziz). None of these people were hired.

Additionally, Aziz provided the EEOC with a list of over 50 institutions of higher learning which did not offer him a position, thus undermining his claim that he was "highly" qualified for the job. Finally, the statics on diversity among members of Tri-State student body and faculty also support the lack of pretext. In fact, one of the ME/AE faculty members is 64 years old and from Bangladesh (Aziz was 63 years old at the time of his application). Moreover, all of the faculty in the ME/AE Department are over the age of 40, except one. Thus, Tri-State argues that race or age discrimination is not even a remote possibility.

As Tri-State has offered legitimate non-discriminatory reasons for not hiring Aziz, and Aziz has completely failed to present any evidence showing that proffered reasons were pretextual, this court must grant summary judgment in favor of Tri-State on all Aziz's claims.

Conclusion

For all the foregoing reasons, Tri-State's motion for summary judgment is hereby GRANTED.

Enter: June 10th 1997.

William C. Lee, Chief Judge
United States District Court

EXHIBIT 3

AE/ME Search Chairman
School of Engineering
Tri-State University
Angola, IN 46703

Sub: Application for the Chairman of the
Mechanical/Aerospace Engineering

Dear Mr. Chairman:

Enclosed you will kindly find a resume of my education and experience sent to you for your favorable consideration in response to your recent ad in the Chronicle of Higher Education.

The names and addresses of two references are:

1. Dr. William Barsch,. Professor and Chairman
Department of Engineering Technology
Youngstown State University
Youngstown, OH 44555

2 Mr. Frank Krygowski, Associate Professor
Department of Engineering Technology
Youngstown State University
Youngstwon, OH 44555

Respectfully submitted.

_____

Abdul Aziz, Ph.D.
9222 Edmonston Road
Greenbelt, MD 20770
USA

Logos of
Tri-State University

Jerry R. Beehler
Vice-president for Academic Affairs

February 10, 1995

Dr. Abdul Aziz
9222 Edmonston Road
Greenbelt, MD 20770

Dear Dr. Aziz:

In your letter of February 7, 1995, addressed to the President of Tri-State University you indicate that you wee an applicant for the position of Chair of the ME/AE Department at Tri-State University.

The position was not filled, and has not been filled due in part to a decision to structure the academic administration at Tri-State University. Dr. Roger Hawks, a long-time member of the ME/AE faculty, continues to serves as department chair in acting capacity.

Sincerely,

SD/- Jerry R. Beehler

Jerry R. Beehler
Vice President for academic Affairs
Tri-State University

EXHIBIT 5

Logos of
Tri-State University

R. John Reynolds
President

PERSONAL AND CONFIDENTIAL

May 3, 1995

Roger Hawks
Tri-State University

Dear Dr. Hawks:

I am pleased to offer you a 10-month faculty contract as tenured Professor and Department Chair of Mechanical and Aerospace Engineering for 1995-96 at salary of . The term of this contact shall be from August 28, 1996. The week beginning 28, 1995 will be devoted to faculty/staff in-service workshops. Any salary increase for the 1995-96 academic year will be determined after final enrollment numbers are evaluated in September, 1995.

On behalf of students, the trustees and your faculty colleagues, let me thank you for your commitment to the programs of Tri-State University. Your service as a member of the faculty is the very essence of why Tri-State University remains successful in these challenging times. I am looking forward to working with you in the coming year.

If the terms of this contract are acceptable to you, please sign, date, retain one copy. and return the original of this letter to the Personnel Office no later than May 17, 1995.

Sincerely,
Sd/- R. John Reynolds
R. John Reynolds
President

EXHIBIT 6

a page from University catalogue

280 TRI-STATE UNIVERSITY

Michael N. Gray (1994) Assistant Professor of Civil and Environmental Engineering
B.S., University of Maine. Ph.D., University of Notre Dame

Albert A. Guilford (1957-61. 1967) Associate Professor of Civil and Environmental Engineering
B.S. Tri-State University; Michigan State University, P.E. Indiana.

Dick W. Mack (1977) Chair and Associate Professor of Physical Education and Head Coach Men's Basketball

Roger J. Hawks Chair and Professor of Mechanical and Aerospace Engineering B.S. University of Cincinnati: M.S. Massachusetts Institute of Technology

Mohsinul Huq (1961-65. 1969) Associate Professor of Mechanical Engineering
B.S. Dacca Engineering College; M.S. Michigan State University; Honorary Doctorate of International Studies. Tri-State University

Ira F. Jones (1983) Professor of Biology . Chemistry

B.S.. Davidson College; M.S.. New York University. Ph.D.. Auburn University

Joan Karbch (1994) Assistant Professor of English
B.A..St. Francis College, M.A. Indiana University: Ph.D. Purdue University

THE ADVERTISEMENT OF THE POSITION

CHAIRMAN, AEROSPACE AND MECHANICAL ENGINEERING

The Department of Mechanical and Aerospace Engineering at Tri-State University has opened the search and invites applications for the position of department chairman. The chairman will be expected to lead and develop the program and to cultivate industrial, alumni, and professional relationships. Requirements are a Ph.D. in Aerospace or Mechanical Engineering and experience in teaching. Industrial experience is highly desirable. The individual specializations in aircraft structures, finite element analysis, or structural or solid mechanics are preferred. Other areas will be considered. The Tri-State University is a private, undergraduate only institution committed to quality, career oriented education. The search will continue until the position is filed. Applications with resumes and names and addresses for three references should be sent to AE/ME Search Chairman, School of Engineering, Tri-State University, Angola, Indiana 46703. Tri-State University is an Affirmative Action, Equal Opportunity Employer,

LOGOS

TRI-STATE UNIVERSITY

P.O. Box 307
Angola, IN 46703
Phone (219) 665 4100
Fax (219) 665 4100

March 8, 1995

Abdul Aziz, Ph.D.
9222 Edmonston Road
Greenbelt, MD 20770

Dear Dr. Aziz:

I am writing in response to your letter of February 21, 1995, in which you have requested additional information about the budgetary constraints which resulted in our terminating our Chairman's search. Other than sending you a copy of the budget which has recently been approved by our Board of Trustees in which the position for Chairman of Mechanical Engineering has been eliminated, I really have no other documentation. However, this has been the determination of the president of the university that we will not be filling in the 1995-1996 academic year's position. We will likely initiate a search to either fill the chairman position for the 96-97 academic or additional faculty to the aerospace/mechanical department at that time.

However, the institution has some severe financial constraints which require it to be aggressively pursuing a campus building and the maintenance program as well as endowment activities which have precludes us filling the position at this time

.

Should you require additional information, or if you have any further question, I will respond.

Sincerely yours,

Sd/- Andrew J. Wilson
Dean of Engineering

AJW/sb

EXHIBIT 9 12a

AT&T

ABDUL AZIZ
Acct 301 513 0453 431 16

Mar 20 1998

Amount	Place		Number	Date	Time	Rate	Min	
$ .30	CHICAGO	IL	312 435-5850	Mar 10	12:09P	*N	2	-
.60	SAN FRAN	CA	415 556-9730	10	12:19P	*N	4	-
3.12	ST JOHNS	AN	268 404-6442	11	7:52A	*K	2	
1.50	MEMPHIS	TN	901 544-0116	11	10:44A	*N	10	-
.60	CHICAGO	IL	312 435-5850	11	2:37P	*N	4	-
.15	ANGOLA	IN	219 665-4228	12	10:43A	*N	1	-
.30	ANGOLA	IN	219 665-4228	12	3:19P	*N	2	-
$15.52	Subtotal							

- AT&T One Rate Plan calls.
Charges are not included in subtotal